

Decision 04-08-034 August 19, 2004

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Application of Sea Planes, Incorporated to amend its Certificate of Public Convenience and Necessity to expand its operating authority to Catalina Island by adding a stop on its existing route so that it will be authorized to carry passengers on a scheduled service to any and all places on Catalina Island from Marina Del Rey and Avalon.

Application 04-05-029  
(Filed May 17, 2004)

**O P I N I O N**

**Summary**

This decision grants the application of Sea Planes, Inc. (Applicant), a corporation, pursuant to Pub. Util. Code § 1007, to extend its certificate of public convenience and necessity to operate as a vessel common carrier (VCC), as defined in Pub. Util. Code § 238.

**Background**

Applicant is currently authorized to operate as a VCC transporting passengers and their baggage on a scheduled basis between Marina del Rey and the City of Avalon on Santa Catalina Island (Catalina) pursuant to Decision (D.)

01-09-042.<sup>1</sup> This application requests authority to expand the service points on Catalina. Applicant contends that ferrying passengers to places on the island other than Avalon is an integral part of the ferry business on Catalina. It states that expansion of the service would enable it to better serve the public and is crucial to Applicant's economic success. Because this is a request to modify an existing certificate, Applicant requests that it be relieved of having to provide all of the information normally required of VCC applicants by Rule 21 of the Commission's Practice and Procedure.

On June 10, 2004, Applicant filed its "Motion to Expedite Granting of Application to Amend Certificate of Public Convenience and Necessity on VCC 85." Applicant requests expedited handling of its application because of an asserted great and immediate need for the service. It explains that while the application requests authority to serve all points on Catalina, Two Harbors is in reality the only other harbor, besides Avalon, that is equipped to handle the docking of a large passenger vessel. Further, what is described in the application as "expanded service" is simply one additional stop on Catalina along Applicant's existing route from Marina del Rey to Avalon.

The Motion to Expedite is accompanied by copies of over 50 letters and e-mails of support Applicant received after it announced to the public that it had applied for authority to serve Two Harbors. Applicant states that much of this support is from individuals who reside on the Westside of Los Angeles, the San

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<sup>1</sup> D.01-09-042 gave Applicant two years to initiate cross-channel service. Applicant's initial tariff filing was effective June 19, 2003. Earlier authority granted to Applicant by D.00-09-021 to operate coastwise service between Santa Barbara, Marina del Rey, and San Diego expired when Applicant failed to initiate the service within 120 days as required by the decision.

Fernando Valley and points north who currently must travel to San Pedro to obtain vessel service to Two Harbors.

On June 14, 2004, Catalina Channel Express, Inc. (Express) filed a Response to the application. Express operates a VCC service between Long Beach, San Pedro, and Dana Point, on the one hand, and points on Catalina, on the other hand. Express' principal issues are a claimed lack of clarity in Applicant's description of the proposed expanded service, Applicant's financial ability to operate the service, and whether there is a public need for the service.

Express filed a Response to Applicant's Motion to Expedite on June 15, 2004. It is now satisfied with Applicant's description of the authority requested (i.e., only the additional point of Two Harbors). Express states, however, that the application is still deficient in other respects as set forth in its first Response.

On June 24, 2004, Applicant and Express filed a "Stipulation for Expeditious Processing of Application and Withdrawal of Response." Attached as Exhibit A is a copy of Applicant's "Supplement to Application to Amend Certificate of Public Convenience and Necessity on VCC 85." The Stipulation provides that upon Applicant's filing of the original Supplement with the Commission, Express' concerns are alleviated and its Responses are withdrawn. The Supplement, also filed June 24, 2004, clarifies that in addition to serving Two Harbors from Marina del Rey, Applicant seeks authority to transport passengers between Two Harbors and Avalon.

## **Discussion**

We examined Applicant's operational and financial fitness when we originally granted it authority to serve Catalina. We found that Applicant was operationally and financially fit to provide the service. Express has withdrawn

its request that Applicant be required to submit additional information to establish its fitness.

A map of the points involved, submitted as Exhibit A-1 of the Motion to Expedite, supports Applicant's position that Two Harbors is located along its already existing and approved route. Applicant has amply demonstrated public need for the proposed service. We therefore will grant the application without requiring Applicant to submit any additional information to support its request.

Notice of filing of the application appeared in the Commission's Daily Calendar on May 20, 2004. Applicant served a copy of the application on the City of Avalon, Express, and Pacific Adventure Cruises.<sup>2</sup> In Resolution ALJ 176-3134 dated May 27, 2004, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protest has been received. The Responses filed by Express have been withdrawn. Given this status, public hearing is not necessary, and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3134.

This an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

### **Assignment of Proceeding**

Richard Clark is the assigned Examiner in this proceeding.

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<sup>2</sup> Express filed a protest and request for evidentiary hearing in Applicant's original application for cross-channel authority (Application 01-02-028). Pacific Adventure Cruises sought leave to file a late-tendered protest in that matter, which was denied by the assigned Administrative Law Judge.

### **Findings of Fact**

1. Applicant is currently authorized to operate as a scheduled VCC, pursuant to D.01-09-042, to transport passengers and their baggage between Marina del Rey and the City of Avalon on Catalina.
2. Applicant requests authority to extend the VCC service to include operations between Marina del Rey and Two Harbors on Catalina, and between Two Harbors and the City of Avalon.
3. Public convenience and necessity requires the proposed service.
4. Based on our previous findings in D.01-09-042, Applicant is financially and operationally fit to operate the proposed service.
5. No protest to the application has been filed.
6. A public hearing is not necessary.
7. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

### **Conclusions of Law**

1. Public convenience and necessity has been demonstrated and the application should be granted.
2. Since the matter is uncontested, the decision should be effective on the date it is signed.
3. In view of the public need for this service, Applicant should be authorized to file tariffs and timetables on one day's notice to the Commission and the public.
4. Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

**O R D E R**

**IT IS ORDERED** that:

1. The certificate of public convenience and necessity (CPCN) granted to Sea Planes, Inc. (Applicant), a corporation, authorizing it to operate as a vessel common carrier (VCC), as defined in Pub. Util. Code § 238, to transport persons and their baggage between the points set forth in Appendix VCC-85 of Decision 91-09-042, is amended by replacing Original Page 2 with First Revised Page 2, subject to the conditions contained in the following paragraphs.

2. Applicant shall:

- a. File a written acceptance of this certificate within 30 days after this order is effective.
- b. File tariffs and timetables for the additional service authorized by this order. They may become effective on one day's notice to the Commission and the public.
- c. Establish the authorized service and file tariffs and timetables within 120 days after this order is effective.
- d. Comply with General Orders Series Orders Series 87, 104, 111, and 117.
- e. Maintain accounting records in conformity with the Uniform System of Accounts.
- f. Remit to the Commission the Transportation Reimbursement Fee required by Pub. Util. Code § 423 when notified by mail to do so.

3. Applicant shall comply with all the rules, regulations, and requirements of the United States Coast Guard, including applicable Vessel Traffic System requirements, in the operation of the service authorized in Ordering Paragraph 1.

4. Applicant is authorized to begin operations on the date that the Consumer Protection and Safety Division mails a notice to Applicant that its evidence of

insurance and other documents required by Ordering Paragraph 2 have been filed with the Commission.

5. The amended CPCN to operate as VCC-85, granted herein, expires unless exercised within 120 days after the effective date of this order.

6. The Application is granted as set forth above.

7. This proceeding is closed.

This order is effective today.

Dated August 19, 2004, at San Francisco, California.

MICHAEL R. PEEVEY

President

CARL W. WOOD

LORETTA M. LYNCH

GEOFFREY F. BROWN

SUSAN P. KENNEDY

Commissioners

\* SECTION II.

Scheduled Service

- (1) Between Marina del Rey, on the one hand, and Avalon and Two Harbors on Santa Catalina Island, on the other hand.
- (2) Between Avalon and Two Harbors, both points on Santa Catalina Island.